

**PRESENT: ROBERT B. WIGGINS**  
**Acting Justice of the Supreme Court**

COPY

**SUPREME COURT**  
**STATE OF NEW YORK**      **COUNTY OF LIVINGSTON**

**New Yorkers for Constitutional Freedoms;**  
**Jason J. McGuire; Duane R. Motley; Nathaniel S. Leiter,**

**Plaintiffs,**

**-VS-**

**DECISION and ORDER**  
**Index No. 807-2011**

**New York State Senate; the New York State**  
**Department of Health, and Eric R. Schneiderman,**  
**in his official capacity as the Attorney General of the**  
**State of New York,**

**Defendants.**

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**Plaintiffs commenced this action seeking declaratory and injunctive relief against legislation Bill No. 8354-2011, known as “The Marriage Equality Act.” Defendants oppose the action, and have now moved to have the Complaint dismissed pursuant to CPLR Sections 3211(a)(1) and (7). Both sides have submitted Memoranda of Law and both sides orally argued their positions on November 14, 2011 in Livingston County Supreme Court.**

**Any decision by this Court MUST stress that this Court has no authority to voice its opinion on same-sex marriage. This Court is limited to the questions raised concerning the procedures followed by the Legislature in passing this Bill. It would be easy to construe any decision as a statement on the ultimate issue, and this decision can not and will not make such a statement.**

**The Respondent has raised multiple issues in its motion to dismiss. Some of these issues are easily decided and some require further analysis.**

**The Constitution of the State of New York, in Article III, section 14, requires that any bill be printed and on the desks of the Legislators for three (3) days prior to any vote, unless the Governor certifies facts which necessitate immediate vote thereon.**

**In this case, the Governor took that action and cited the following as**

necessitating immediate vote:

“The facts necessitating an immediate vote on the bill are as follows: This bill would amend the domestic relations law to grant same-sex couples the long overdue right to enter into civil marriages in New York. The continued delay of the passage of this bill would deny over 50,000 same-sex couples in New York critical protections currently afforded to different-sex couples, including hospital visitation, inheritance and pension benefits.”

Logically and clearly this cite by the Governor is disingenuous. The review of such concept altering legislation for three days after generations of existing definitions would not so damage same sex couples as to necessitate an avoidance of rules meant to ensure full review and discussion prior to any vote. Nonetheless, this Court is reluctantly obliged to rule that the message of necessity submitted by the Governor was accepted by vote of the Senate, and is NOT within this Court’s province to nullify. *Maybe v State of New York et al*, 4 N.Y.3d 415.

Parenthetically, this statute had a legislative history where it had been changed to require more information from the Governor. The 1938 version only requires that the Governor “certifies the necessity of immediate passage” without any explanation of why or what factors constitute the necessities. The present version requires that same certification as well as requiring the facts giving rise to the necessity. Logic would seem to dictate that the additional requirement was added to eliminate the artificial use of necessities meant only to ‘strike while the iron is hot’(or while the vote is as desired). Regardless, although the disregard for the statute seem evident, the Court feels constrained to not rule on the Governor’s certification of necessities.

It is ironic that much of the State’s brief passionately spews sanctimonious verbiage on the separation of powers in the governmental branches, and clear arm-twisting by the Executive on the Legislative permeates this entire process.

Article III Section 10 of the constitution holds that the doors of the house shall be kept open except when the public welfare requires secrecy. There is no demonstration that the public welfare on this issue required secrecy. The question then for this Court is: Does this apparent disregard for the open doors requirement authorize Judicial action?

Public Officers Law Section 100 is the Legislative declaration and it states: “It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials....”

Public Officers Law Section 103 exempts executive sessions from the open meetings requirements.

Public Officers Law Section 105 defines Executive Session, and this Court

finds the action in this case is NOT an executive session, and is, therefore, not thereby exempt from the open meetings requirements.

Public Officers Law Section 108 goes on to list further exemptions to the open meetings requirement, and it includes as exempt: “the deliberation of political committees, conferences and caucuses defined as a private meeting of the Senate or Assembly of the State of New York,...who are members or adherents of the same political party, without regard to (i) the subject matter..., (ii) the majority or minority status..., or (iii) whether such political committee, conferences and caucuses invite staff or guests to participate.”

The State argues this case involved a Republican caucus to which guest or guests were invited. As such, it is exempt from the open meetings requirement.

The Plaintiff argues the particular guests, the opposition party Governor and others, makes this a non-exempt gathering, and, therefore, subject to the open meetings requirement.

The situation at hand is very similar to the case of *Warren v. Giambra*, 12 Misc3d 650 (Sup. Ct., Erie Co., 2006) where the court held a meeting of eight Democratic legislators with the Republican County Executive regarding pending budget and funding issues was not exempt from the Open Meetings Law. As referred to above, the New York Legislative declaration regarding the Open Meetings Law is that, “It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberation and discussion that go into the making of public policy. The People must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the government process to operate for the benefit of those who created it.” (POL §100). The Legislators found when the law was amended in 1985 to include meetings discussing public business that the public interest was promoted by “private, candid exchange of ideas and points of view among members of each political party concerning public business to come before the legislative bodies.” (*Humphrey v. Pasloszny*, 175 AD2d 587 [4<sup>th</sup> Dept. 1991] citing Legislative Intent of L.1985, Ch. 136, §1). Thus, every meeting of a public body shall be open to the general public with some exceptions (POL §§103, 108).

In this case, the bill for Marriage Equality Act had been pending with continuous discussion among legislators, the governor, lobbyists, and citizens. With some exceptions, the Democratic Governor and Democratic Senators supported the bill while the majority Republican Senators opposed it. Plaintiffs allege that in a closed meeting between all Republican Senators and Governor Coumo, Governor Coumo actively engaged to persuade Republican Senators to break with their party’s position and vote for the bill. Plaintiffs asserts this was a violation off the

**Open Meetings Law. The State responds that the meeting was a caucus of Republican Senators with the Governor attending as a guest therefore being exempt under POL §108(2).**

**On a motion to dismiss the complaint pursuant to CPLR §3211, the Court must consider allegations by Plaintiff as true. Considering Plaintiff's allegations, and without deciding the matter at this time, the Court feels there is a justiciable issue presented whether there was a violation of the Open Meeting Law. There are not sufficient facts before the Court to determine the matter; thus, the case shall proceed on this issue. The complaint is dismissed on other issues, and dismissed in its entirety against the Attorney General.**

**Dated: November 18, 2011  
Geneseo, New York**

A handwritten signature in black ink, appearing to read 'R. B. Wiggins', is written over a horizontal line.

**Hon. Robert B. Wiggins  
Acting Supreme Court Judge**